

***COLOMBIA – ANTI-DUMPING DUTIES ON FROZEN FRIES FROM BELGIUM,
GERMANY AND THE NETHERLANDS***

(DS591)

**THIRD PARTY EXECUTIVE SUMMARY
OF THE UNITED STATES OF AMERICA**

October 27, 2022

I. APPELLANT'S CLAIMS UNDER ARTICLE 5.3

1. Article 5.2(iii) of the Anti-Dumping Agreement indicates that the application requesting the initiation of an investigation shall contain "information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product)." The term "where appropriate" should be interpreted in the context of the introductory clause of Article 5.2, which states that "[t]he application shall contain such information as is reasonably available to the applicant," including information about "normal value" under subparagraph (iii). The term "where appropriate" in Article 5.2(iii) thus anticipates that there may be circumstances in which it is "appropriate" for an applicant to submit third-country sales or constructed value data in its application.

2. An investigating authority enjoys a degree of discretion with respect to the type of evidence it may rely on in determining whether to initiate an investigation if it is satisfied that an application contains "sufficient evidence" as required under Article 5.3. Therefore, if an authority determines, after examining the accuracy and adequacy of the evidence provided in an application, that domestic sales pricing information was not reasonably available to an applicant, that is a circumstance in which it would be appropriate for the applicant to submit information on third country sales, or the constructed value, of the product. An authority is not otherwise required to demonstrate that the information in the application was the only information reasonably available to an applicant.

II. APPELLANT'S CLAIMS UNDER ARTICLES 3.1, 3.2, 3.4, AND 3.5

3. Article 3 of the Anti-Dumping Agreement focuses on the investigating authority's injury analysis of the effect or impact of "the dumped imports." Article 2.1 of the Anti-Dumping Agreement defines dumped products, "[f]or the purposes of this [Anti-Dumping] Agreement," on a countrywide basis. The references to "the dumped imports" throughout Article 3 therefore concern all the dumped imports of the product from the countries subject to the investigation. In this respect, the Agreement requires an authority to examine, for example in Articles 3.1 and 3.2, the volume and price effects of "the dumped imports."

4. Imports of an exporter or producer for which an individual margin of dumping is determined to be zero or *de minimis* do not constitute part of "the dumped imports" of the product from the countries subject to the investigation. Article 5.8 requires an authority to terminate an anti-dumping investigation in respect of any exporter or producer for which an individual margin of dumping is determined to be zero or *de minimis*. Once a zero or *de minimis* margin has been finally determined for a particular exporter or producer, the investigation must be terminated in all aspects, including the exclusion of the imports of that exporter or producer from the authority's injury analysis of the effect or impact of "the dumped imports."

5. The United States considers that the Panel's interpretation is correct as it accords with the ordinary meaning of "dumped imports": The term "dumped imports" in Articles 3.1, 3.2, 3.4, and 3.5 of the Anti-Dumping Agreement excludes the imports of any exporter or producer for which an individual margin of dumping is determined to be zero or *de minimis*.